REMARKS

Claims 1-14 and, upon entry of this amendment, new claim 21 are pending. Applicants have cancelled claims 15-20. Claim 1 has been amended. Claim 21 is newly presented. The above amendments are submitted without waiver or prejudice to Applicants' ability to pursue previously pending subject matter in this or a continuing patent application.

In response to the Restriction Requirement, Applicants elect without traverse the invention of Group 1, claims 1-14, drawn to a method for performing electrophoresis.

Claim 1 is objected to on several grounds. See the Office Action, page 4, lines 7-11. Claim 1 as presented herein is believed to be in proper form.

Claims 1-14 are rejected under 102§(b) as anticipated by Falkner et al., U.S. Patent. No. 5,789,153, ("Falkner").

Falkner discloses a method of quantitating nucleic acids in a sample. Falkner, 1: 4-5. The method includes separating amplified standard nucleic acid from amplified nucleic acid to be quantified. Id., 3:39-50. The separation can consist of gel electrophoresis or of a chromatographic method. Id. Falkner says that the amount of nucleic acid is a function of the peak area of the amplified nucleic acid of the sample, the peak area of the amplified standard nucleic acid, the number of used copies of the standard nucleic acid in the PCR reaction, the ratio of the unit volume to the extracted volume, and the dilution factor of the sample. Id., 5:11-26.

Quantitating amplified nucleic acid as described by Falkner does not disclose or suggest the present invention, which includes determining at least one property of sample fragments based upon first color calibration information and fluorescence spectra of the sample fragments, where the color calibration information is based upon the fluorescence intensity at each of a plurality of wavelengths of the reference fragments. To the contrary, one would understand that the peak area of Falkner refers to an area of a gel electrophoresis peak or chromatographic peak rather than to the fluorescence intensity at each of a plurality of wavelengths. Accordingly, Falkner does not anticipate claim 1 as presented herein. Further, claims 2-14 all depend from claim 1 and are not anticipated by Falkner for at least the same reasons. Applicants respectfully submit that the rejection of claims 1-14 as anticipated by Falkner has been overcome.

No fee is believed due. Please apply any charges or credits to deposit account 06-1050 referencing Attorney's Docket No: 16969-029001.

Respectfully submitted,

Date: January 3, 2005

Julius C. Fister, III, Ph.D.
Reg. No. 46,702

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20999018.doc